

ATTACHMENT 3 APPEAL

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City of Costa Mesa

CITY OF COSTA MESA
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- ☐ Appeal of Planning Commission Decision/Rehearing: \$1,220.00
☐ Appeal of Zoning Administrator/ Building Official / Fire Marshal / Staff Decision: \$690.00

APPLICATION FOR APPEAL, REHEARING, OR REVIEW

Applicant Name* Joseph E. Miller / 1072 Bristol Partners, LP
Address 1072 Bristol Street, Suite 100, Costa Mesa, CA 92626
Phone 714-935-2315 Representing 1072 Bristol Partners, LP

Alison Miller

REQUEST FOR: ☐ REHEARING ☒ APPEAL ☐ REVIEW**

Decision of which appeal, rehearing, or review is requested: (give application number, if applicable, and the date of the decision, if known.)

Approval of Ganahl Lumber Project and Mitigated Negative Declaration - PA-14-40; decided by the Planning Commission on 2/23/2015.

Decision by: Planning Commission

Reasons for requesting appeal, rehearing, or review:

The Planning Commission's approval of the Ganahl Lumber Project was a prejudicial abuse of discretion because, among other things,

- Ganahl Lumber's proposed lumber yard use is not permitted or conditionally permitted in the C-1 zone.
- The Ganahl Lumber project proposes modifications to Bristol Street that will negatively impact access to and from the properties on the south side of Bristol.
- There were no facts to support the "findings" to approve the Conditional Use Permit.
- The "findings" supporting the variances (for setback and height) were not supported by substantial evidence.
- The approval of signage that doubles the height allowed by the Zoning Code was not supported by substantial evidence.
- The project is under-parked and does not comply with the parking requirements provided in the City's Municipal Code.
- The project does not comply with the FAR requirements provided in the City's Municipal Code.
- The conditions of approval are vague.
- The Planning Commission improperly approved the mitigated negative declaration when the environmental document failed to consider, among other things, the access impacts to the properties on the south side of Bristol caused by the proposed modifications to the center median on Bristol.

1072 Bristol's objection letter submitted to the Planning Commission is also attached. This application in no way limits the grounds or evidence on which this appeal is being made.

DDM Investments LLC,
General Partner.
General Partner Officer:

ALISON A. MILLER

Date: February 26, 2015

Signature: [Signature]

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.

**Review may be requested only by Planning Commission, Planning Commission Member, City Council, or City Council Member

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

If appeal, rehearing, or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal, rehearing, or review:

Updated July 2011



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February 23, 2015

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REFER TO FILE NO
36650-003

VIA E-MAIL

Planning Commissioners
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628

Re: Objection to the Proposed Ganahl Lumber Project

Dear Honorable Members of the Costa Mesa Planning Commission:

This office represents the ownership of the 1072 Bristol Street property--1072 Bristol Street Partners, LP (1072 Bristol).

1072 Bristol objects to the proposed very large Ganahl Lumber Project directly across Bristol. We request that this letter be included in the administrative record for this project.

The public has not been provided correct or adequate information about this mega-lumber yard project. In reviewing the Staff Report, the Staff Report omits material and fundamental information. Further, it lacks analysis and support. In many areas, the words that are strung together are bureaucratese. The mega Ganahl simply does not comply with the City's Zoning Code.

This Planning Commission is required to apply the Zoning Code even if it receives an inadequate Staff report. The number of years a company has been in business is no

Planning Commissioners
February 23, 2015
Page 2

justification for non-compliance with a request to build a mega project (as the Staff Report ridiculously seems to suggest).

Here, this applicant is seeking to be excused from compliance with nearly all of the requirements of the Zoning Code. The use is not permitted in the zone. The buildings proposed are far too big. There is woefully insufficient parking and the buildings are too close to the street.

Staff seems to focus the Ganahl business as a justification for wholesale noncompliance with the City's code. There is no "likeability" exception. The City cannot award a privilege or series of privileges to the applicant.

This applicant is requesting that the Planning Commission approve a project that requires the City to essentially disregard the Zoning Code, while there is a pretense of compliance.

Based upon the actual requirements of the City's Zoning Code, this is not a close call. The proposed Ganahl mega lumber yard project should be denied.

1. **The lumber yard project does not comply with the City's C1 Zoning.**

Without any analysis, the Initial Study/Mitigated Negative Declaration for this project and the Staff Report claim that the proposed lumber yard complies with the City's C1 zoning. It does not even come close.

This is a lumber yard. Ganahl Lumber is a lumber company. It is a lumber and building materials dealer. A significant component of the project is a request for a **sawmill**. A retail use under the zoning code does not include or allow lumber yards or sawmills.

The Initial Study/Mitigated Negative Declaration spins the project as a "hybrid" use. There is no "hybrid" use in the Municipal Code.

At best, the Ganahl lumber yard mega project is a lumber yard with an ancillary retail use--not the other way around. This is evident by the proposed site configuration and design and the building layout.

It is evident by the proposed location and distribution of parking. Retail uses do not provide a significant number of parking spaces behind guard gates or on a roof of a

Planning Commissioners
February 23, 2015
Page 3

building. There are less than 50 surface parking spaces that are not behind guard gates for a 65,263 square-foot "retail" building. That is a parking ratio of .75 spaces for every 1,000 square-feet of the "retail" building--a far cry from the City's 4 spaces for every 1,000 square-feet of retail requirement (this ratio is even more egregious when considering the rest of the proposed buildings in the calculation).

Further, the Staff Report admits that the City's Municipal Code does not provide a parking requirement for lumber yards. (Staff Report, p. 13.) This proves that this is not retail--this is a lumber yard. A lumber yard is not permitted.

2. **The Staff Report does not inform the Planning Commission of the proposed modifications to be made to Bristol that will impact access to the properties on the south side of Bristol.**

One of the aspects of Ganahl's mega lumber yard project that is completely absent from the Staff Report (and the conditions of approval) are the proposed changes to be made to Bristol.

The Initial Study/Mitigated Negative Declaration provides *some* information regarding the modifications. Even then, the information provided lacks detail and analysis.

From the little information provided, the Ganahl lumber yard project will make significant modifications to Bristol in order to accommodate the two new entrances to the Ganahl property.

Instead of taking access from the existing curb-cut at the middle of the property, Ganahl is proposing two new access points on Bristol. To provide access to those two new proposed access points, there will be modifications made to Bristol (changes to the Newport Blvd./Bristol intersection and a dedicated left-turn in to the new driveway at the east end of the property from Bristol).

Those modifications will negatively impact access to the properties on the south side of Bristol including the 1072 Bristol property for vehicles travelling west on Bristol. Yet, no information was provided in the Staff Report of these modifications and neither

Planning Commissioners
February 23, 2015
Page 4

the Staff Report or the Initial Study/Mitigated Negative Declaration analyze or discuss the impacts to the properties opposite the proposed Ganahl lumber yard site.

3. **The proposed building setback variance does not comply with the Zoning Code requirements for a variance.**

This project requests a very large variance from the building setback requirements in the Zoning Code. The variance is not justified. There are no special circumstances to justify this significant of a variance. Approving a variance here would provide a privilege to Ganahl. The proposed variance is inconsistent with other properties in the area. As such, the Planning Commission cannot make the required findings.

The Staff Report attempts to justify the variance from the setback requirements by comparing the proposed project to the 1072 Bristol property and the property located at 1182 Bristol Street claiming that both of these properties have less than the 20 foot landscape requirement. (Staff Report, p. 10.)

The comparison fails for a number of reasons. One of the more significant reasons is the amount of building that is being proposed in the setback area. The comparison properties (1072 and 1182) each have less than 50 lineal feet of building in the required setback area. The Ganahl project plans to put nearly 450 lineal feet of building (without any break), a building that is already oversized (proposed with an objectionable height variance), in the required setback area. Allowing a height variance and a setback variance for a building with a use not allowed by the C-1 zoning, spanning nearly four-and-a-half football fields of frontage on Bristol is not comparable to the 1072 and 1182 Bristol properties.

4. **The proposed height variance does not comply with the Zoning Code requirements for a variance.**

The requested variance from the height standards is not justified. There are no special circumstances requiring the variance. Rather, the "special circumstance" cited by the Staff Report is the use that is not permitted by the Zoning Code.

Planning Commissioners
February 23, 2015
Page 5

Further, the condition of approval that provides that the B-shed, that requires a height variance, can later install "rooftop solar canopies" that will increase the height of the B-Shed even further, through a simple approval from the Development Services Director is also not supported.

5. **Approval of the signage that doubles the height allowed by the Zoning Code provides a privilege to Ganahl.**

There is no justification for the Planned Sign Program that proposes to approve a 24-foot high freestanding sign--a 100 percent increase from what is allowably by the City Code. The Staff Report's claim that the approval "will not constitute a grant of special privilege or allow substantially greater overall visibility" is without support.

6. **The Staff Report does not explain what the CUP is required for. There is no evidence to support the approval of the proposed CUP.**

Generally, a Staff Report will clearly state what use requires a CUP. Here, the Staff Report makes no such statement. The use proposed for the CUP is not permitted in the C1 zone. There is no analysis of the "CUP" sought. There are no real conditions of approval being applied to the use proposed.

7. **The parking analysis does not make sense.**

As discussed above, the parking discussion demonstrates that the proposed use is a lumber yard--not retail. If this was a retail use, the parking requirements would be much greater--4 parking spaces for every 1,000 square-feet of building.

Further, the discussion of the number of parking spaces provided on-site is misleading. While the project proposes 286 parking spaces, there is no discussion of the location of those spaces. For example, it appears that nearly 60 spaces are behind gates. 108 of the spaces are on the roof of the building. As a condition of approval, the employees are to exclusively use the roof parking. (Staff Report, p. 13.) Elsewhere the Staff Report discusses that the "proposed facility would employ approximately 120

Planning Commissioners
February 23, 2015
Page 6

employees at full capacity. . ." (Staff Report, p. 7.) This means that all of the roof parking would be taken by employees with some spilling over to the surface parking spaces. As discussed above, that means that there are really less than 50 parking spaces available for customers for the 99,516 square-feet of building in this project.

8. **The Ganahl Project does not comply with the FAR requirements of the Zoning Code.**

The proposed project does not comply with the FAR requirements. In an attempt to claim the project complies, the Staff Report includes a footnote explaining that the FAR calculation does not include the 6,672 square-foot "Pole Shed" because the "Pole Shed" is not an enclosed buildings. The Zoning Code does not provide such an exception to the FAR calculation.

9. **The Initial Study/Mitigated Negative Declaration does not consider the real impacts of the project.**

The Initial Study/Mitigated Negative Declaration is deficient. Its analysis is premised on the application of an incorrect zoning assumption--that the proposed project complies with the C-1 zoning. It does not consider the impacts to access to properties on the south side of Bristol caused by the project's proposed modifications to Bristol. It does not consider the light and glare impacts caused by the numerous reflective surfaces being added.

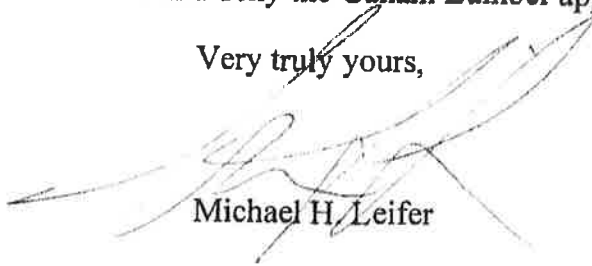
10. **Conclusion.**

To approve this proposed project would relieve Ganahl lumber of virtually all of the requirements of the Zoning Code that are applied, on a regular basis, to other property owners and users. The Ganahl lumber yard project cannot exist here. It is too big. It is too close to the street. There is no evidence to support the deviation from the Zoning Code.

Planning Commissioners
February 23, 2015
Page 7

1072 Bristol Partners requests that the Planning Commission not adopt the Initial Study/Mitigated Negative Declaration and deny the Ganahl Lumber application.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael H. Leifer", is written over the typed name. The signature is fluid and cursive.

Michael H. Leifer

MHL:ebn

cc: Brenda Green, City Clerk
Mel Lee, Senior Planner